

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT JACKSON

FILED

September 3, 1998

Cecil Crowson, Jr.
Appellate Court Clerk

SARAH TAYLOR,)	
)	
Plaintiff/Appellee)	HARDEMAN CHANCERY
)	
v.)	NO. 02S01-9708-CH-00074
)	
HARMAN AUTOMOTIVE, INC.,)	HON. DEWEY C. WHITENTON,
)	JUDGE
Defendant/Appellant)	

For the Appellant:

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For the Appellee:

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MEMORANDUM OPINION

Members of Panel:

Justice Janice Holder
Senior Judge John K. Byers
Special Judge J. Steven Stafford

REVERSED

BYERS, Senior Judge

OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

Review of the findings of fact made by the trial court is *de novo* upon the record of the trial court, accompanied by a presumption of the correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2); *Stone v. City of McMinnville*, 896 S.W.2d 548, 550 (Tenn. 1995). The application of this standard requires this Court to weigh in more depth the factual findings and conclusions of the trial court in a workers' compensation case. See *Corcoran v. Foster Auto GMC, Inc.*, 746 S.W.2d 452, 456 (Tenn. 1988).

The issue raised in this case is whether the trial judge erroneously set aside a previously approved settlement of the plaintiff's workers' compensation case against the defendant.

We find it was error to set this judgment approving the settlement aside. We reverse the judgment which did so and reinstate the judgment approving the settlement.

Prior to April 17, 1995, the plaintiff and the defendant reached an agreement to settle the plaintiff's claim against the defendant. The parties filed a joint petition seeking court approval of the agreement. On April 17, 1995, the petition was heard by Chancellor Morris, sitting by interchange for Judge Whitenton in Hardeman County.

After hearing the plaintiff and other statements, Chancellor Morris found the settlement was proper, was understood by the plaintiff, and gave her substantially what she was entitled to under the Workers' Compensation Act.

On May 4, 1995, the plaintiff filed a petition to set aside the settlement because "her workers' compensation settlement was procured by fraud, or in the alternative, the settlement did not secure to her in a substantial manner the benefits under the workers' compensation law of the State of Tennessee."

On September 13, 1996, Judge Whinton, not the judge who approved the settlement, set aside the judgment entered on April 17, 1995 and ordered a trial on the case.¹ The case was then tried on April 29, 1997.

The plaintiff claims on this appeal that the setting aside of the approved settlement was warranted under Tenn. Code Ann. § 50-6-206, which allows for the setting aside of a settlement of a compensation claim if the trial court finds the settlement does not substantially award an employee the benefits to which he is entitled under the Workers' Compensation Act. The plaintiff also claims that the setting aside of the approved settlement was proper under Rule 60.02 of the Tennessee Rules of Civil Procedure, which provides for the setting aside a final judgment based upon "(1) mistake, inadvertence, surprise or excusable neglect; (2) fraud . . . , misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) [not necessary to this case]; or (5) any other reason justifying relief from the operation of the judgment."

We are unable to say whether Judge Whinton relied upon Tenn. Code Ann. § 50-6-206 or upon Rule 60.02 of the Tennessee Rules of Civil Procedure in setting aside the judgment. We are also not able to say what reason Judge Whinton found for relying upon the one he selected. In ruling on the petition to set aside the judgment, Judge Whinton stated: "Based on the facts before the Court, the Court is going to set this settlement aside and allow this matter to be reopened."

Chancellor Morris, who approved the settlement and entered the judgment thereon, found the settlement did give the plaintiff substantially the rights to which she was entitled under the Workers' Compensation Act. Judge Whinton, who set the settlement aside, found the settlement substantially deprived the plaintiff of her rights under the Act. The fact that Judge Whinton awarded the plaintiff more benefits in the trial of the case than were obtained in the settlement is not a sufficient basis upon which to find that the settlement did not properly award the plaintiff under the Act. Therefore, we find the settlement could not be set aside under Tenn. Code Ann. § 50-6-206 because the evidence is not sufficient to do so.

¹ In the settlement of April 17, 1995, the plaintiff was awarded a lump sum payment based upon a 40 percent permanent partial disability to both arms. At the trial of April 29, 1997, the trial judge found the plaintiff had a 60 percent impairment to her right arm and a 50 percent impairment to her left arm.

As in the case of Tenn. Code Ann. § 50-6-206, Judge Whinton made no definitive finding upon which criterion he found if he set the judgment aside under Rule 60.02 of the Tennessee Rules of Civil Procedure.

The implication of the petition to set aside the settlement and the testimony of the plaintiff in the hearing on the petition was that the defendant committed fraud in procuring the settlement because on April 18, 1994 the defendant transferred her from the "rework department" of the plant, which was light duty work, to the plastics line, which was not light duty work.

The evidence shows that on February 17, 1995 at the settlement conference, the plaintiff expressed a need to be moved to light duty work. The plaintiff returned to work on February 20, 1995 and was assigned to the rework department, which consisted of sorting out flawed parts from the production lines for reworking. This was light duty work and within the plaintiff's medical restrictions. Prior to this, the plaintiff worked in the plastics department and was not doing work within her restrictions.

The record shows that between February 1995 and April 1995, the defendant had reorganized its function which eliminated the rework department and transferred the task of sorting out flawed parts to the production lines where the parts were made. In other words, the rework department was essentially transferred to the production lines, and the people who sorted out these parts were assigned to a production line.

On April 18, 1995, the day after the settlement, the plaintiff was told she would be assigned to the plastics line. The plaintiff did not work on that date because she had a doctor's appointment, and she never returned to work. The plaintiff's explanation for not returning to work was that she had worked in the plastics department before and that she was unable to do this work because of the injuries to her arms, therefore deciding there was no use in returning. The plaintiff testified she asked a supervisor what she would do in the plastics department and he told her that she would be doing anything that needed to be done.

A workers' compensation specialist, employed by the State, testified the plaintiff, at the settlement conference, expressed concern about being able to continue with light duty work after the settlement was approved. The specialist

testified the settlement was reached based upon light duty work being fulfilled by the defendant.

The plaintiff did not attempt to return to work until September 7, 1995 and was told at that time no jobs were available within her medical restrictions.²

The supervisor for whom the plaintiff would work in the plastics department testified he told the plaintiff she would be doing sorting, which was light duty work.

The burden of proof lies with the party seeking relief under Rule 60.02 of the Tennessee Rules of Civil Procedure to show facts giving rise to the relief sought. *Holt v. Holt*, 751 S.W.2d 426, 427 (Tenn. App. 1988); *Brumlow v. Brumlow*, 729 S.W.2d 103, 106 (Tenn. App. 1986). The plaintiff therefore has the burden in this case. After considering all the evidence in this case, it shows the following: that the plaintiff's medical restrictions required her to do light duty work; that she was placed on light duty work in the rework department; that this job was moved to the plastics department; that she was transferred to that department to do sorting, as she had done in the rework department; that she assumed she would have to do heavy duty work in the plastics department, as she had done before; and that when she attempted to return to work in September 1995 all the sorting jobs had apparently been filled.

The preponderance of the evidence shows the plaintiff would have been doing light duty work in the plastics department. The evidence to the contrary, if any, is the plaintiff's testimony that she assumed she would have to do heavy duty work in that department. This assumption by the plaintiff is not sufficient to carry the burden of proof required by the rule.

We reverse the judgment of the trial court setting aside the judgment approving the settlement. We strike the judgment entered on May 7, 1997, which awarded the plaintiff benefits after a trial of the case subsequent to the setting aside of the settlement judgment. We reinstate the judgment approving the settlement agreement, which was filed on May 5, 1995.

The cost of this appeal is taxed to the plaintiff.

² It is not absolutely clear in the record, but apparently the light duty job was filled after the plaintiff failed to return to work in April 1995.

John K. Byers, Senior Judge

CONCUR:

Janice Holder, Justice

J. Steven Stafford, Special Judge

IN THE SUPREME COURT OF TENNESSEE

AT JACKSON

SARAH TAYLOR)	Hardeman Chancery No. 10172
)	
Plaintiff/Appellee)	Hon. Dewey C. Whitenton,
)	Chancellor
v.)	
)	Supreme Court No.
HARMAN AUTOMOTIVE, INC.)	02-S-01-9708-CH-00074
)	
Defendant/Appellant)	Reversed

<p>FILED</p> <p>September 3, 1998</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>
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JUDGMENT ORDER

This case is before the Court upon motion for review pursuant to Tenn. Code Ann. § 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the motion for review is not well-taken and should be denied; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Cost will be paid by plaintiff-appellee, for which execution may issue if necessary.

PER CURIAM

Holder, J., not participating